NO. 43030-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

OAKRIDGE HOMES II, LTD., a Washington corporation,

Appellant,

v.

FIRST-CITIZENS BANK & TRUST COMPANY, a North Carolina banking association;

Respondent,

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

I. RESTATEMENT OF THE ISSUES 1
II. RESTATEMENT OF THE CASE 1
III. SUMMARY OF ARGUMENT 3
IV. ANALYSIS 4
A. STANDARD OF REVIEW 4
B. THE AGREEMENT IS VOID UNDER THE STATUTE OF FRAUDS FOR FAILING TO INCLUDE A COMPLETE LEGAL DESCRIPTION. 4
1. A legal description was neither included in the nor attached as "Exhibit A" to the Agreement 4
2. The Agreement did not permit the later insertion of a legal description. 6
3. The "Street Address" information lacks the required block number and addition to satisfy the statute of frauds and extrinsic evidence is necessary to determine an accurate legal description. 7
4. The mere inclusion of tax parcel numbers without additional required information is insufficient to satisfy the statute of frauds. 11
5. The execution of a deed does not rise to the level of part performance required to remove the Agreement from the strict requirements of the statute of frauds. 11
C. OAKRIDGE WAIVED ANY EQUITABLE, CONTRACTUAL, OR TORT CLAIMS AGAINST FIRST-CITIZENS BY EXECUTING ADDENDUM – "EXHIBIT B". . 12
D. THE PARTIES NEVER MANIFESTED THEIR MUTUAL ASSENT REGARDING THE TERMS OF THE TRANSACTION 14
E. THE TRIAL COURT PROPERLY AWARDED FEES AND COSTS TO FIRST-CITIZENS. 17
F. FIRST-CITIZENS IS ENTITLED TO FEES ON APPEAL PURSUANT TO RAP 18.1 18

TABLE OF AUTHORITIES

CASES

Bartlett v. Betlach, 136 Wn. App. 8, 146 P.3d 1235 (2006), *review denied*, 162 Wn.2d 1004 (2007) 5, 10

Bingham vs. Sherfey, 38 Wn. 2d 886 (1951) 11

Dunbabin v. Allen Realty Company, 26 Wn. App. 660 (1980) 11

Geonerco, Inc. v. Grand Ridge Prop. IV, LLC, 146 Wn. App. 459, 191 P.3d 76 (2008) 7

Jacob's Meadow Owners Ass'n v. Plateau 44 II, LLC, 139 Wn. App. 743, 162 P.3d 1153 (2007) 15

Key Design, Inc. v. Moser, 138 Wn.2d 875, 983 P.2d 653, 993 P.2d 900 (1999) 5, 7, 8, 10

Keystone Land & Dev. Co. v. Xerox Corp., 152 Wn.2d 171, 94 P.3d 945 (2004), *cert. denied*, 544 U.S. 905 (2005) 14

Maier v. Giske, 154 Wn. App. 6, 223 P.3d 1265 (2010). 4

Marine Enterprises, Inc. v. Security Pacific Trading Corp., 50 Wn. App. 768, 750 P.2d 1290 (1988) 18

Martin v. Seigel, 35 Wn.2d 223, 212 P.2d 107 (1949) 5, 8

Miller v. McCamish, 78 Wn. 2d 821, 479 P.2d 919 (1971) 11, 12

Nishikawa v. United States Eagle High, L.L.C, 138 Wn. App. 841, 158 P.3d 1265 (2007), *review denied*, 163 Wn.2d 1020 (2008) 7

Noah v. Montford, 77 Wn.2d 459, 463 P.2d 129 (1969) 7

Reeves v. McClain, 56 Wn. App. 301, 783 P.2d 606 (1989) 18

Torgerson v. One Lincoln Tower, LLC, 166 Wn.2d 510, 210 P.3d 318 (2009) 14

STATUTES

RCW 4.84.030 17

RCW 4.84.080(1) 17

RULES

RAP 18.1 18

RAP 18.1(a) 18

OTHER AUTHORITIES

18 William B. Stoebuck & John W. Weaver, WASH. PRACTICE: REAL ESTATE: TRANSACTIONS § 16.3, at 225 (2d ed. 2004) 5

I. RESTATEMENT OF THE ISSUES

1. Did the trial court err by granting First-Citizens Bank & Trust Company's ("First-Citizens") cross-motion for summary judgment when (1) the Vacant Land Purchase and Sale Agreement is void under the statute of frauds for failing to include a legal description; (2) Oakridge Homes II, Ltd ("Oakridge") waived any equitable, contractual, or tort claims against First-Citizens in Addendum – "Exhibit B"; and (3) the parties never manifested mutual assent? **No.**

II. RESTATEMENT OF THE CASE

On February 24, 2011, Oakridge made an offer to purchase 19 lots from First-Citizens. Clerk's Papers ("CP") at 222. That offer was pursuant to a Vacant Land Purchase and Sale Agreement, and included: (1) a "Form 22D" Optional Clauses Addendum to Purchase & Sale Agreement; (2) a "Form 35F" Feasibility Contingency Addendum; (3) a "Form 34" Addendum/Amendment to Purchase and Sale Agreement; (4) and Addendum "Exhibit B." CP at 5, 8-18. Of particular note, the offer did not include an "Exhibit A" which is referenced on line no. 4 of the Agreement as follows: "Legal Description: Attached as Exhibit A". *See* CP at 8-18; CP at 57. Scott Serven, president of Oakridge, stated:

> A copy of the original purchase and sale agreement together with the counter-offer from First Citizens Bank to me that was accepted is attached as Exhibit "A". It consists of the document numbers from Chicago Title of 127 through 139.

CP at 5. There is no legal description attached to the document identified by Mr. Serven as a copy of the Purchase and Sale Agreement. *See* CP at 8-18.

First-Citizens did not accept the offer, but on March 3, 2011, submitted a counteroffer on a "Form 36" Counter Addendum to Real Estate Purchase and Sale Agreement, and an "Exhibit C" which included a list of the 19 lots. CP at 7, 19. On March 7, 2011, Oakridge accepted First-Citizens counteroffer by signing the Counteroffer Addendum. See CP at 7.

On September 11, 2009, the Washington State Department of Financial Institutions, Division of Banks, closed Venture Bank, a Washington-chartered commercial bank, and appointed the Federal Deposit Insurance Corporation as receiver for Venture Bank. CP at 56. Immediately thereafter, First-Citizens, acquired most of the assets of Venture Bank pursuant to a "Purchase and Assumption Agreement" between First-Citizens and the Federal Deposit Insurance Corporation in its capacity as Receiver for Venture Bank. CP at 56. The assets purchased by First-Citizens included a loan secured by the real property which is the subject of this appeal, which loan was in the process of foreclosure at the time Venture Bank was closed. CP at 56-57. First-Citizens completed the foreclosure and acquired the property at a Trustee's Sale on December 18, 2009. CP at 57.

Upon making its initial offer, Oakridge executed Addendum – "Exhibit B", which is a standard addendum First-Citizens uses for all real estate transactions involving property acquired from Venture Bank. CP at 5, 17-18. The addendum gives the broadest protection to First-Citizens, and requires the purchaser to agree to make no claims against First-Citizens, including claims in tort or contract, and advises purchasers: how the Bank acquired title; that the property is sold "as is"; and that the purchaser waives any claims against First-Citizens, including, "***all rights, claims, and demands at law or in equity . . . arising out of the physical, environmental, economic, or legal condition of the Property, including, without limitation, all claims in tort or contract . . .***" CP at 17-18 (emphasis added).

It was First-Citizens' understanding of the transaction that it would receive $26,000 from the sale of each of the 19 lots. CP at 57. At closing, Oakridge took the unexpected position that it could deduct from the purchase price amounts it might have to pay to governmental agencies if and when it decides to develop the lots. CP at 57.

III. SUMMARY OF ARGUMENT

The Vacant Land Purchase and Sale Agreement ("Agreement") is void under the statute of frauds for failing to include a complete legal description. Oakridge waived any equitable, contractual, or tort claims against First-Citizens by executing Addendum – "Exhibit B". The parties never manifested mutual assent regarding the terms of the transaction. As

such, the trial court did not err in granting First-Citizens cross-motion for summary judgment.

IV. ANALYSIS

A. Standard of Review.

First-Citizens does not dispute Oakridge's stated authority for the standard of review for summary judgment. Brief of Appellant ("Br. of App.") at 11.

B. The Agreement is void under the statute of frauds for failing to include a complete legal description.

Oakridge asserts that First-Citizens' argument that the Agreement is void under the statute of frauds for failing to include a complete legal description is factually wrong and legally unsupportable. Br. of App. at 11-12. Washington law is clear that an agreement purporting to convey property that contains an inadequate legal description is void. *Maier v. Giske*, 154 Wn. App. 6, 15, 223 P.3d 1265 (2010). It is undisputed that an adequate legal description was neither included in the Agreement nor attached as "Exhibit A" to the Agreement. Therefore, the Agreement is void and the trial court properly granted First-Citizens cross-motion for summary judgment.

1. A legal description was neither included in the nor attached as "Exhibit A" to the Agreement.

The Agreement did not have a legal description attached. To comply with the statute of frauds, Washington strictly requires a legal description of the property that an agreement purports to convey. *Martin*

v. Seigel, 35 Wn.2d 223, 228, 212 P.2d 107 (1949); *see also Key Design, Inc. v. Moser,* 138 Wn.2d 875, 881-84, 983 P.2d 653, 993 P.2d 900 (1999). Washington's rule is "the strictest in the nation.... In most states an incomplete description or a street address is sufficient, and parol evidence may be received to locate the land. Not so in Washington." 18 William B. Stoebuck & John W. Weaver, WASH. PRACTICE: REAL ESTATE: TRANSACTIONS § 16.3, at 225 (2d ed. 2004). Whether an agreement includes an adequate legal description is a question of law. *See Bartlett v. Betlach*, 136 Wn. App. 8, 13, 146 P.3d 1235 (2006), *review denied*, 162 Wn.2d 1004 (2007).

Here, the description of the lots to be sold is inadequate under the statute of frauds. The Agreement does not purport to include a legal description – the Agreement states, "Legal Description: Attached as Exhibit A." CP at 8. However, no Exhibit "A" was attached with a legal description. *See* CP at 7-19

Factually, Oakridge has created confusion by submitting and referencing an alleged copy of the initial offer made by Oakridge to First-Citizens. Br. of App. at 3; CP at 224-241. Oakridge argues that the legal description was attached to that initial offer. Br. of App. at 3, 12-13. Oakridge further argues that First-Citizens' Counteroffer incorporates said legal description. Br. of App. at 3-4, 12.

It must be made clear, however, the entire Agreement between Oakridge and First-Citizens, which includes the initial offer made by

Oakridge, was previously provided by Oakridge through the Declaration of Scott Serven. *See* CP at 5-19. As President of Oakridge, Mr. Serven declared that the document attached as Exhibit "A" to his Declaration is the Agreement between Oakridge and First-Citizens and is comprised of 13 pages identified by Chicago Title's Bates stamp numbers 127 – 139. CP at 5-6.

Again, the Agreement references in item no. 4 on the first page: "Legal Description: Attached as Exhibit A". CP at 8. However, there is no "Exhibit A" attached to the Agreement. For Oakridge's counsel to argue otherwise is to contradict Mr. Serven's own testimony, in which Dawn Gadwa, Vice President of First Citizens concurs – there was no legal description attached to the parties' agreement. CP at 57.

Despite Oakridge's many and varied attempts to argue otherwise, there is no legal description attached to the Agreement. *See* CP at 7-19. Accordingly, Oakridge's argument that the legal description was incorporated into the Agreement by reference must fail as a matter of law.

2. The Agreement did not permit the later insertion of a legal description.

In addition, because there is no authority for anyone to insert a legal description after the Agreement was signed, the statute of frauds is not satisfied. There is an exception to the statute of frauds where, although a purchase and sale agreement itself includes no legal description, the agreement authorizes an agent to "insert the legal

description of the properties over their signatures" at a later time. *Noah v. Montford,* 77 Wn.2d 459, 463, 463 P.2d 129 (1969); *Nishikawa v. United States Eagle High, L.L.C,* 138 Wn. App. 841, 158 P.3d 1265 (2007), *review denied,* 163 Wn.2d 1020 (2008). In *Nishikawa*, two parties authorized an agent to insert a legal description in a purchase and sale agreement over their signatures at a later time. *Nishikawa,* 138 Wn. App. at 845–46. Because the parties authorized the agent to insert the legal description and the agent did so, Division Two of the Court of Appeals held that the agreement satisfied the statute of frauds' requirement of a legal description. *Id.* at 849–50; s*ee also Geonerco, Inc. v. Grand Ridge Prop. IV, LLC*, 146 Wn. App. 459, 464, 191 P.3d 76 (2008) (statute of frauds satisfied when purchase and sale agreement contained a provision allowing agent to insert legal description at a later date over the parties' signatures).

Here, the Agreement does not include any provision allowing for the later insertion of a legal description by an agent. The Agreement references an attached "Exhibit A", but no "Exhibit A" was ever attached. No exception applies to the requirement that the Agreement include an adequate legal description.

3. The "Street Address" information lacks the required block number and addition to satisfy the statute of frauds and extrinsic evidence is necessary to determine an accurate legal description.

Washington law is clear that reference to the property's street address, city, and state is not enough. *Key Design,* 138 Wn.2d at 878;

Martin, 35 Wn.2d at 228-29. Further, every contract or agreement involving a sale or conveyance of platted real property must contain, in addition to the other requirements of the statute of frauds, the description of such property by the correct lot number(s), block number, addition, city, county, and state. *Key Design*, 138 Wn.2d at 882. A legal description is insufficient if the court needs to resort to extrinsic evidence to definitively locate the property. *Key Design*, 138 Wn.2d at 881.

The "Street Address" information provided in the Agreement is insufficient to satisfy the requirements for an adequate legal description. The Agreement does not include the block numbers or addition as required by *Key Design*. *See* CP at 7-19.

Oakridge relies on the testimony of Lyle Fox and George Peters to support its argument that the reference in the "Street Address" section of the Agreement is a sufficient legal description under Washington law and the property can be located without resorting to extrinsic evidence. Br. of App. at 13-16. However, Mr. Peters, in his deposition, steps back from this position. Mr. Peters acknowledges that the reference in the "Street Address" section of the Agreement is not a complete legal description; rather the title company added references to the recording number for the original plat and the revision of the plat. CP at 307-308.

Although stated to the contrary in his declaration (CP at 174), at his deposition, Mr. Peters admitted that he did not know if the legal description in Chicago Title's preliminary commitment was prepared from the First-Citizens' Counteroffer, which was the only version of the

Agreement in Chicago Title's records. CP at 306. In his description of the process of preparing a legal description for a title commitment, Mr. Peters was candid that he would not do so without the benefit of his company's own "plant records." CP at 310-311. Mr. Peters indicated that he didn't know if he could prepare a legal description relying only on Pierce County's records, as he had never done so. CP at 311-312.

Further, it is interesting to note that there are two significantly different versions of the Silver Creek Phase 3 plat on record with Pierce County. The original Silver Creek Phase 3 plat was recorded with Pierce County on May 12, 2005, and is comprised of seven pages and involved approximately 250 lots. *See* CP at 121-128. Later, a significant amendment was made to the plat. The Plat Alteration of Lots 20-55 of Silver Creek Phase 3 was recorded with Pierce County on January 27, 2006. *See* CP at 129-132. The 19 lots allegedly subject to the Purchase Agreement between First Citizens and Oakridge were lot 22 and lots 28 through 45. CP at 7-8. In comparing the original plat of these lots and the amended plat, there were substantial changes to the lots. Lot 22 went from being in the middle of a block to a corner lot, and the dimensions changed from 35 ft. x 92 ft. to an irregular lot size of roughly 73 ft. x 82 ft. The other 18 lots, lots 28 – 45, also changed significantly in size, from 35 ft x 98 ft. to 40 ft. x 98 ft. There is no reference in the Agreement to the amended plat of Silver Creek Phase 3. *See* CP at 7-19. This discrepancy in the two versions of the plat can only be resolved through extrinsic evidence.

To comply with the statute of frauds, Washington strictly requires a legal description of the property that an agreement purports to convey, without resort to extrinsic evidence.

> [2] ¶17 Conveyance of real property requires a legal description. *Key Design, Inc. v. Moser,* 138 Wn.2d 875, 881-84, 983 P.2d 653 (1999); *Martin v. Seigel,* 35 Wn.2d 223, 229, 212 P.2d 107 (1949). Reference to the property's street address, city, and state is not enough. *Key Design,* 138 Wn.2d at 878, 881-84; *Seigel,* 35 Wn.2d at 228-29. "'[A] contract or deed for the conveyance of land must contain a description of the land sufficiently definite to locate it without recourse to oral testimony [or extrinsic evidence], or else it must contain a reference to another instrument which does contain a sufficient description.'" *Berg v. Ting,* 125 Wn.2d 544, 551, 886 P.2d 429 (1960)); *Tenco, Inc. v. Manning,* 59 Wn.2d 479, 485, 368 P.2d 372 (1962).

Bartlett v. Betlach, 136 Wn. App. 8, 14, 146 P.3d 1235 (2006).

Here, the description of the lots in the "Street Address" section of the Agreement is inadequate under the statute of frauds. Because of foregoing described failings, to determine which lots were to be included in the Agreement, it is necessary to look at extrinsic documents. In other words, an accurate legal description of the property could only be determined by use of extrinsic evidence. As such, the Agreement does not include an adequate legal description. The trial court did not err granting First-Citizens' cross-motion for summary judgment.

4. The mere inclusion of tax parcel numbers without additional required information is insufficient to satisfy the statute of frauds.

Oakridge cites *Bingham vs. Sherfey*, 38 Wn. 2d 886 (1951) for the proposition that a tax parcel number is sufficient for an enforceable purchase agreement under the statute of frauds. Br. of App. at 16-17. This is not a correct reading of *Bingham*. In that case, which preceded the more recent cases on the subject, the purchase agreement included the tax parcel number and the section, township and range of the property, in addition to a metes and bounds legal description. No Washington case has held that a tax parcel number alone is sufficient under the statute of frauds.

5. The execution of a deed does not rise to the level of part performance required to remove the Agreement from the strict requirements of the statute of frauds.

Oakridge also cites *Dunbabin v. Allen Realty Company*, 26 Wn. App. 660 (1980) for the proposition where the parties acknowledge the property involved in the transaction, no legal description is required. Br. of App. at 17-18. Again, that is a misreading of the case. *Dunbabin* involved a case of part performance, which under proper circumstances takes a case out from under the strict requirements of the statute of frauds. In *Dunbabin*, the purchaser had possession of the property for years, and was making payments on the contract to the seller.

Oakridge also mistakenly relies on *Miller v. McCamish*, 78 Wn. 2d 821, 479 P.2d 919 (1971), to support its argument that First-Citizens' statute of frauds defense fails on the ground of part performance. Br. of

App. at 18-19.[1] Like *Dunbabin*, *Miller* involved a case of part performance. In *Miller*, for consideration of an option to purchase the Respondents' farm at the end of three years, the Petitioners moved onto the Respondents' farm, resided rent free, and worked the farm for an annual salary, one-half of which was retained by the Respondents to apply toward the purchase price. The court found an express oral contract between the parties on the basis that the contract term and conditions were amply and specifically proved. *Miller*, 78 Wn. 2d at 831.

The contracts at issue in *Dunbabin* and *Miller* are not real estate purchase and sale agreements (otherwise known as earnest money agreements); but rather a real estate contract (*Dunbabin*) and an option to purchase (*Miller*). Both *Dunbabin* and *Miller* are inapplicable to the present case because the present case is not one of part performance under a real estate contract or option to purchase.

C. Oakridge waived any equitable, contractual, or tort claims against First-Citizens by executing Addendum – "Exhibit B".

Oakridge has waived any claims against First-Citizens in equity, contract, or tort. First-Citizens, which acquired the property at issue in this case from the FDIC as Receiver for Venture Bank, requires a standard Addendum for all sales of real property due to its very limited knowledge

[1] It should be noted that while its Brief of Appellant provides the heading "STATUTE OF FRAUDS IS INAPPLICABLE WHEN BEING USED TO PERPETRATE A FRAUD", Oakridge fails to provide any evidence or arguments supporting the allegation that First-Citizens is perpetrating a fraud; rather, under this heading Oakridge continues to argue that part performance should remove the Agreement from the strict requirements of the statute of frauds.

of the property. This Addendum was attached to the Agreement between Oakridge and First-Citizens, and is entitled Addendum—"Exhibit B." CP at 17-18. Oakridge, as the Buyer, had full knowledge of First-Citizens' limited knowledge regarding the property. By signing Addendum—"Exhibit B," Oakridge acknowledged that the terms of that Addendum, "supersede any and all conflicting terms in the Purchase Agreement or any other documents between Buyer and Seller relating in any way to this transaction." CP at 17-18.

Oakridge argues that Addendum – "Exhibit B" only releases First-Citizens from liability for defects in the physical condition of the property. Br. of App. at 20. However, Paragraph 2 of the Addendum – "Exhibit B" provides that Oakridge is basing its decision to purchase solely upon its own inspection of the property, and Oakridge waives any and all claims against First-Citizens:

> Consistent with the foregoing, Buyer . . . hereby releases and forever discharges Seller . . . from any and all rights, claims, and demands at law or in equity, whether known or unknown at the time of this Agreement, which Buyer has or may have in the future, arising out of the physical, environmental, economic or legal condition of the property, including, without limitation, all claims in tort or contract and any claim for indemnification or contribution . . . . Buyer hereby specifically acknowledges that Buyer has carefully reviewed this Addendum and discussed (or had ample opportunity to discuss) its legal import with legal counsel that the provisions of this Addendum are a material part of the Purchase Agreement.

CP at 17-18 (emphasis added). The language in Paragraph 2 clearly provides Oakridge agrees to release First-Citizens from any and all claims arising out of not only any physical and environmental conditions of the property, but also arising out of any economic and legal conditions as well. It can not be disputed that the school mitigation fee falls under the purview of Paragraph 2 of the Addendum – "Exhibit B" voluntarily executed by Oakridge.

Parties in commercial real estate transactions may limit their remedies essentially in any way they desire. *See Torgerson v. One Lincoln Tower, LLC,* 166 Wn.2d 510, 517-24, 210 P.3d 318 (2009). Here, Oakridge, purportedly an experienced home builder, clearly had the experience to understand the rights and responsibilities of the parties under the Agreement in this case. Oakridge is entitled to a return of its earnest money deposit, but nothing further, as it has waived all other rights to make claims in equity, contract, or tort pursuant to the provisions of Addendum—"Exhibit B."

D. The parties never manifested their mutual assent regarding the terms of the transaction.

Washington follows the objective manifestation test for contracts. Br. of App. at 26; *Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wn.2d 171, 177, 94 P.3d 945 (2004), *cert. denied*, 544 U.S. 905 (2005). Accordingly, for a contract to form, the parties must objectively manifest their mutual assent. *Keystone Land*, 152 Wn.2d at 177. Moreover, the terms assented to must be sufficiently definite. *Keystone Land*, 152 Wn.2d

at 178. If a term is so "indefinite that a court cannot decide just what it means, and fix exactly the legal liability of the parties," there cannot be an enforceable agreement. *Keystone Land*, 152 Wn.2d at 178. "The burden of proving the existence of a contract is on the party asserting its existence." *Jacob's Meadow Owners Ass'n v. Plateau 44 II, LLC,* 139 Wn. App. 743, 765, 162 P.3d 1153 (2007).

There was clearly no manifestation of mutual assent regarding the terms of this transaction. At closing, Oakridge demanded a $3,005.00 deduction from the purchase price for fees it alleges it would have to pay to the school district if and when it builds homes on the lots. CP at 57; CP at 111-112. It later took the position that it is entitled to another $5,000.00 in deductions for other fees it would allegedly have to pay upon construction of homes on the lots. CP at 57. Oakridge now argues that there is no ambiguity in the Agreement and First-Citizens' subjectively believed it would not be required to pay the school mitigations fees. Br. of App. at 26. This position is contrary to the terms of the Purchase Agreement, and clearly contrary to the understanding of First-Citizens.

First-Citizens offered Oakridge a rock-bottom price for the purchase of the lots. CP at 57. First-Citizens had no understanding that there would be any deductions from this price other than standard deductions for real estate commissions, excise tax and title insurance. CP at 57.

Furthermore, the terms of the Agreement are not sufficiently definite. The Agreement purports to require the Seller to pay "delinquent ...encumbrances which remain after Closing," but the Agreement does not define what is an "encumbrance." CP at 10. The Agreement also does not define when an encumbrance is "levied," nor what is a "charge" or "assessment." CP at 10. Oakridge appears to believe that any amounts it might incur should it ever decide to develop the lots at issue are "encumbrances," "charges," and/or "assessments," but there is nothing in the Agreement that would support such an interpretation. In fact, the Feasibility Contingency Addendum included within the Agreement clearly contemplates Oakridge's responsibility for payment of the school district fees, as well as all other charges required to be paid upon development of the property. More specifically the Feasibility Contingency, in part, expressly provides the following:

> ... Buyer's inquiry shall include, but not be limited to: building or development moratoria applicable to or being considered for the Property; any special building requirements, including setbacks, height limits or restrictions on where building may be constructed on the Property; whether the Property is affected by a flood zone, wetlands, shorelands or other environmentally sensitive area; road, school fire and any other growth mitigation or impact fees that must be paid; the procedure and length of time necessary to obtain plat approval and/or a building permit; sufficient water, sewer and utility and any service connection charges; and all other charges that must be paid. ...

CP at 13 (emphasis added). First-Citizens never understood the Agreement's terms to include charges that Oakridge may some day incur if it ever follows through on its intention to develop the lots. CP at 57.

The Plaintiff references only a "Mitigation Agreement" in support of its claim that it is entitled to a $3,005.00 per lot reduction in the purchase price. CP at 111-112. That Mitigation Agreement was referenced in the Chicago Title Commitment for Title Insurance as requiring a $650.00 per lot charge. CP at 82. The actual Mitigation Agreement, which is a document recorded in 1996, makes no reference to Silver Creek Phase 3 and has no legal description which would in any way involve Silver Creek Phase 3. CP at 114-120. How can this document be considered an "encumbrance" on the lots when it makes no reference to Silver Creek Phase 3 or the real property comprising Silver Creek Phase 3? Also, the Mitigation Agreement does not reference a required payment of $3,005.00, and there is no formula in the Mitigation Agreement from which one can derive a required payment of $3,005.00. *See* CP at 20-25.

Because the parties never manifested mutual assent regarding the Agreement and the terms are not sufficiently definite, the transaction must fail.

E. The Trial Court Properly Awarded Fees and Costs to First-Citizens.

The Agreement provides for attorney fees and costs: "[I]f Buyer or Seller institutes suit against the other concerning this Agreement[,] the

prevailing party is entitled to reasonable attorneys' fees and expenses." CP at 11. In addition, First-Citizens is entitled to statutory costs and attorney fees pursuant to RCW 4.84.030 and RCW 4.84.080(1). The trial court did not err in granting First-Citizens' cross-motion for summary judgment and, therefore, the trial court properly granted First-Citizens its reasonable attorney fees and costs as the prevailing party.

F. First-Citizens is Entitled to Fees on Appeal Pursuant to RAP 18.1.

Pursuant to RAP 18.1, First-Citizens requests its attorneys' fees and costs incurred on appeal. As set forth in RAP 18.1(a), if applicable law grants to a party the right to recover attorney fees or expenses on review, the party must request the fees and expenses as provided in this rule. For the reasons set forth at length above, First-Citizens has a contractual right to recover its attorneys' fees and costs of defense, not only at the trial court but on appeal before this Court. *Reeves v. McClain,* 56 Wn. App. 301, 311, 783 P.2d 606 (1989) (contractual provision for award of attorney fees at trial supports award of attorney fees on appeal); *Marine Enterprises, Inc. v. Security Pacific Trading Corp.*, 50 Wn. App. 768, 774, 750 P.2d 1290 (1988). First-Citizens requests fees on appeal.

RESPECTFULLY SUBMITTED this 11th day of June, 2012.

EISENHOWER & CARLSON, PLLC

By: _____

Robert G. Casey, WSBA # 14183
Jennifer McIver, WSBA # 38798
Attorneys for Respondents

CERTIFICATE OF SERVICE

KIMBERLY S. RUGER declares and states as follows:

1. I am a legal assistant at the law firm of Eisenhower & Carlson, PLLC, am over the age of 18, and am otherwise competent to testify.

2. On the 11th day of June, 2012, I deposited with Legal Messengers, a true and correct copy of the foregoing, Brief of Respondent, to be delivered to counsel for the Appellant on June 12, 2012 at the following address:

Bart L. Adams
Adams & Adams Law, P.S.
2626 North Pearl Street
Tacoma, WA 98407

I declare under the penalty of perjury and in accordance with the laws of the state of Washington that the foregoing is true and correct.

DATED at Tacoma, Washington this 11th day of June, 2012.

Kimberly S. Ruger
KIMBERLY S. RUGER